

**FILED**

**JUN 9 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MERREK MASON, by and through his  
parents; RICK MASON; JULIE MASON;  
KELSIE MASON, by and through her  
parents Rick & Julie Mason,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 04-35850

D.C. No. CV-03-05220-RBL

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Ronald B. Leighton, District Judge, Presiding

Argued and Submitted June 6, 2006  
Seattle, Washington

Before: TALLMAN and BYBEE, Circuit Judges, and HUFF<sup>\*\*</sup>, District Judge.

The Dungeness National Wildlife Refuge manager exercised discretion as  
contemplated by the discretionary function exception to the Federal Tort Claims

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Marilyn L. Huff, Chief United States District Judge  
for the Southern District of California, sitting by designation.

Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80, in deciding which natural features constituted safety hazards in need of warning and how such warning should be given. We think this case is closest to the following line of warning cases:

*Childers v. United States*, 40 F.3d 973, 975-76 (9th Cir. 1995), *Valdez v. United States*, 56 F.3d 1177, 1180 (9th Cir. 1995), and *Blackburn v. United States*, 100 F.3d 1426, 1430 (9th Cir. 1996). The decision of the manager “involve[d] the permissible exercise of policy judgment.” *Berkovitz v. United States*, 486 U.S. 531, 537 (1988); *see Blackburn*, 100 F.3d at 1433-34. Accordingly, the district court did not err in dismissing for lack of subject matter jurisdiction under the discretionary function exception to the FTCA.

AFFIRMED.